

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA

§

VS.

§

NO. 3:97-CR-083-D(01)

§

WILLIE FRANK KING  
Movant.

§  
§

**ORDER OF THE COURT ON THE FOREGOING RECOMMENDATION**

Considering the record in this case and the above recommendation, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253 (c), the Court hereby finds and orders:

**IFP STATUS:**

(X) the party appealing is GRANTED *in forma pauperis* status on appeal.  
( ) the party appealing is proceeding *in forma pauperis*.  
( ) the party appealing is DENIED *in forma pauperis* status on appeal  
for the following reasons:

( ) the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on \_\_\_\_\_. Based upon the Magistrate Judge's findings, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S. D. Miss. 1996) (citing *Howard v. King*, 707 F. 2d 215, 219-20 (5<sup>th</sup> Cir. 1983)).  
( ) the person appealing is not a pauper;  
( ) the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court.  
(See Notice of Deficiency and Order entered on \_\_\_\_\_).

**COA:**

( ) a Certificate of Appealability is GRANTED on the following issues: \_\_\_\_\_  
(X) a Certificate of Appealability is DENIED. The Court hereby adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation filed in this case on June 13, 2007, in support of its finding that the writ of audita querela is construed as a motion to correct, vacate, or set aside sentence under 28 U.S.C. § 2255 and is dismissed as a second or subsequent motion because Petitioner has failed to obtain leave of the Fifth Circuit Court of Appeals to file such motion. *See* 28 U.S.C. §§ 2241 & 2244.

SIGNED August 30, 2007.

Sidney A. Fitzwater  
SIDNEY A. FITZWATER  
UNITED STATES DISTRICT JUDGE